

Fees for Commonwealth law matters effective on and from 4 April 2012

Civil Matters – Practitioner Fees

- 1 Local Court and Other Tribunals - Practitioner Fees
- 2 All Courts (except Local and Family Courts) and Nominated Tribunals – Practitioner Fees
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- 4 Travel Entitlements

Fee Scales

1. Local Court and Other Tribunals - Practitioner Fees

Scale of fees for work done on or after 4 April 2012 in Commonwealth matters.

Local Court and other Tribunals

Other tribunals are all tribunals **except** the Commercial Division of the Consumer, Trader and Tenancy Tribunal, the Administrative Appeals Tribunal, the Equal Opportunity Division of the Administrative Decisions Tribunal, and the Human Rights and Equal Opportunity Commission.

"Legal Practitioners" includes solicitors and counsel whether practising in NSW or interstate.

Legal Practitioners (and their authorised agents) will be paid 80% of the amount assessed under the appropriate rates for professional costs and 100% of allowed disbursements. These rates include an allowance for skill, care and responsibility and no additional allowance will be permitted.

Senior Counsel will be allowed 150% (payable at 80%) of the appropriate rate unless otherwise agreed with Legal Aid NSW prior to the work being undertaken.

The fee rates provide for Hourly Rates.

- When advising a client of the estimated cost of the proceedings under the Legal Profession Act, legal practitioners should have regard to the hourly rates.
- At the conclusion of the matter a legal practitioner may choose to submit an account in accordance with the hourly rate.

Advice from Counsel

A lump sum amount of \$526 is paid to counsel for a written advice. Senior counsel is paid at 150% of this lump sum amount.

Hourly Rates

There are two rates based on the following hourly rates:

1. **\$196 per hour** (or \$217 per hour where time is spent in a hearing as an advocate). This rate applies:

- (a) where costs are awarded in favour of the legally assisted person; or
- (b) where there is a component for costs included in the successful settlement.

2. **\$140 per hour** (or \$167 per hour where time is spent in a hearing as an advocate). This rate applies:

- (a) in a jurisdiction where costs are not awarded;
 - (b) where proceedings are discontinued (except where costs are agreed to be paid in favour of the legally assisted person);
 - (c) where costs are not awarded in favour of the legally assisted person;
 - (d) where the matter is concluded unsuccessfully;
 - (e) where there is no component for costs included in the successful settlement;
 - (f) where the solicitor's retainer is terminated prior to the conclusion of the proceedings and the solicitor requires payment of costs by Legal Aid NSW prior to releasing the file;
 - (g) where costs are awarded in favour of the legally assisted person but are not able to be recovered from the party ordered to pay those costs; or
 - (h) where payment of interim accounts is requested by the practitioner.
- Work done by a clerk may be claimed as one-third of the practitioner's rate.

Fee Scales**2. All Courts (except Local and Family Courts) and Nominated Tribunals - Practitioner Fees**

Scale of fees for work done on or after 4 April 2012 in Commonwealth matters.

All Courts (except Local and Family Court) and Nominated Tribunals

Nominated Tribunals are the Commercial Division of the Consumer, Trader and Tenancy Tribunal, the Equal Opportunity Division of the Administrative Decisions Tribunal and the Human Rights and Equal Opportunity Commission.

"Legal Practitioners" includes solicitors and counsel whether practising in NSW or interstate.

Legal Practitioners (and their authorised agents) will be paid 80% of the amount assessed under the appropriate rates for professional costs and 100% of allowed disbursements. These rates include an allowance for skill, care and responsibility and no additional allowance will be permitted.

Senior Counsel will be allowed 150% (payable at 80%) of the appropriate rate unless otherwise agreed with Legal Aid NSW prior to the work being undertaken.

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The fee rates provide for **HOURLY RATES**.

- When advising a client of the estimated cost of the proceedings under the Legal Profession Act, legal practitioners should have regard to the hourly rates.
- At the conclusion of the matter a solicitor may choose to submit an account in accordance with the hourly rate.

Advice from Counsel

A lump sum amount of \$526 is paid to counsel for a written advice. Senior counsel is paid at 150% of the lump sum amount.

Hourly Rates

There are two rates based on the following hourly rates:

1. **\$217 per hour** (or \$239 per hour where time is spent in a hearing as an advocate). This rate applies -
 - i. where costs are awarded in favour of the legally assisted person; or
 - ii. where there is a component for costs included in the successful settlement.
2. **\$154 per hour** (or \$193 per hour where time is spent in a hearing as an advocate). This rate applies -
 - i. in a jurisdiction where costs are not awarded;
 - ii. where proceedings are discontinued (except where costs are agreed to be paid in favour of the legally assisted person);
 - iii. where costs are not awarded in favour of the legally assisted person;
 - iv. where the matter is concluded unsuccessfully;
 - v. where there is no component for costs included in the successful settlement;
 - vi. where the solicitor's retainer is terminated prior to the conclusion of the proceedings and the solicitor requires payment of costs by Legal Aid NSW prior to releasing the file;
 - vii. where costs are awarded in favour of the legally assisted person but are not able to be recovered from the party ordered to pay those costs; or
 - viii. where payment of interim accounts is requested by the practitioner.

Work done by a clerk may be claimed at one-third of the practitioner's rate.

Fee Scales**3. Veterans matters - Practitioner Fees****Scale of fees for grants of legal aid made from 4 April 2012****1. Scale of Fees for work in relation to**

(a) appeals from decisions of the Veterans Review Board in respect to war-caused disability pension entitlements or assessment claims under Part II of the *Veterans' Entitlements Act 1986 (Cth)*, and

(b) appeals from decisions of the Veterans' Review Board about claims under the *Military Rehabilitation and Compensation Act 2004 (Cth)* that relate to warlike or non-warlike service, in regard to:

- (i) acceptance of liability**
- (ii) rehabilitation programs**
- (iii) permanent impairment**
- (iv) incapacity payments for former members**
- (v) special rate disability pension, and/or**
- (vi) dependants' benefits.**

Unless Legal Aid NSW determines the matter to be complex, funding will be granted as follows:

- Stage 1** A maximum of 10 hours for work up to and including the second preliminary conference (including all attempts to settle the matter).
- Stage 2** A maximum of 12 hours work for the hearing (including all preparation and either the costs of a solicitor or the fees of a barrister for appearing at the hearing).

"Legal practitioners" includes solicitors and counsel.

Legal practitioners shall be paid at the rate of \$140 per hour except where advocacy work is undertaken when the rate shall be \$172 per hour.

Legal practitioners may incur disbursements of up to \$2,500 including a maximum of two medical reports, and witness expenses on hearing.

Funding at each stage is subject to merit assessment and compliance with the Commonwealth's Checklist for Administration of War Veterans' matters and the Administrative Appeal Tribunal's General Practice Direction.

Where Legal Aid NSW determines a matter to be complex, appropriate lump sum fees will be negotiated with the legal practitioner.

Work undertaken by clerks will be paid at one - third of the legal practitioner rate.

All claims for disbursements will be assessed by Legal Aid NSW as to their reasonableness before payment.

Payment of costs and disbursements are subject to funds being available and therefore paid at the discretion of Legal Aid NSW.

2. Scale of fees for work in relation to appeals from the Administrative Appeals Tribunal to the Federal Court, Federal Magistrates Service or the High Court in War Veterans Matters.

"Legal Practitioners" includes solicitors and counsel whether practising in NSW or interstate.

Legal Practitioners (and their authorised agents) will be paid 80% of the amount assessed under the appropriate rates for professional costs and 100% of allowed disbursements. These rates include an allowance for skill, care and responsibility and no additional allowance will be permitted.

Senior Counsel will be allowed 150% (payable at 80%) of the appropriate rate unless otherwise agreed with Legal Aid NSW prior to the work being undertaken.

Legal practitioners will be paid the following rates for professional costs:

a) **\$173.60 per hour** or **\$191.20 per hour** where time is spent in hearing as an advocate.

This rate applies where costs are awarded in favour of the legally assisted person or where there is a component for costs included in the successful settlement.

b) **\$123.20 per hour** or **\$54.40 per hour** where time is spent in hearing as an advocate.

This rate applies where:

- i) proceedings are discontinued (except where costs are agreed to be paid in favour of the legally assisted person);
- ii) costs are not awarded in favour of the legally assisted person;
- iii) the matter is concluded unsuccessfully;
- iv) there is no component for costs included in the successful settlement;
- v) the legal practitioner's retainer is terminated prior to the conclusion of the proceedings and the legal practitioner requires payment of costs prior to releasing the file;
- vi) costs are awarded in favour of the legally assisted person but are not able to be recovered by the party ordered to pay those costs; or
- vii) payment of interim accounts is requested by the legal practitioner.

Advice from Counsel

A lump sum amount of \$485 is paid to counsel for a written advice.

Senior Counsel will be paid at 150% of the lump sum amount.

Work undertaken by clerks will be paid at one - third of the legal practitioner rate.

All claims for disbursements will be assessed by Legal Aid NSW as to their reasonableness before payment.

Payment of costs and disbursements are subject to funds being available and therefore paid at the discretion of Legal Aid NSW.

4. Travel Entitlements**Travel Entitlements in Commonwealth Case and Duty Matters****Travel Allowance**

- A travel allowance is paid if the total return distance travelled from the legal practitioner's office to court exceeds 70 kilometres, and the practitioner is travelling to a court located outside the Sydney metropolitan area.
- The Sydney metropolitan area includes all courts within the area bounded by:
 - Hornsby;
 - Penrith;
 - Campbelltown; and
 - Sutherland.
- Unless there are exceptional circumstances, the travel allowance will not be approved where the matter could be assigned to:
 - a practitioner located within 35kms of the court; or
 - a practitioner who is significantly closer to the court; or
 - a practitioner who has other matters at the court on the same day.
- Prior approval to claim the travel allowance must be obtained from Legal Aid NSW.
- If travel allowance is being claimed, approval should be sought in the original application.
- Travel allowance cannot be claimed more than once per day to the same court, regardless of the number of legal aid applicants being represented at that court.
- Where approved, travel expenses will be paid at the correct rate per kilometre, or where appropriate, a return economy airfare (whichever is the cheaper).

Allowance for Commonwealth Defended Local Court and Children's Court criminal law case matters

A lump sum of \$100 for travel time is paid in addition to the travel allowance of \$0.50 per kilometre. The lump sum payment may only be claimed once per day on which travel allowance is payable.

Allowance for Commonwealth Local Court and Children's Court criminal law duty matters

A lump sum of \$100 for travel time is paid in addition to the travel allowance of \$0.60 per kilometre. The lump sum payment may only be claimed once per day on which travel allowance is payable.

Allowance for Commonwealth case matters in

- **criminal law - Local Court (committal matters) District Court and Supreme Court,**
- **family law and**
- **civil law matters**

A travel allowance is paid at \$0.35 per kilometre.

Accommodation

Where approved, accommodation expenses (including sustenance) will be paid as incurred to the maximum rates determined by the Public Employment Office of the NSW government.

Frequently Asked Questions

Is travel allowance available for appeals?

Yes, provided the criteria for the travel allowance is met and prior approval is obtained.

If travel allowance is approved for a criminal trial, is an allowance paid for accommodation and meals?

Yes. Actual expenses for meals and accommodation may be payable for each 24 hour period at rates determined by the Public Employment Office of the NSW government. If an accommodation and sustenance allowance is approved, the applicable rate will be provided to you at the time of the grant. All receipts must be provided and actual expenses only may be recovered. Claims for amounts above the rate will not be paid.

My client has asked me to appear for him at a court that is more than 35kms from my office. My client insists that I appear and is unwilling to accept another solicitor. Is the travel allowance available?

Generally a travel allowance will not be approved where a practitioner located within 35 km of the court is available to appear for the client. In exceptional circumstances travel may be approved, eg. where the client is a child, or has a disability, and Legal Aid NSW agrees that continuity of representation is in the interests of the client.

Is travel allowance payable for views?

Yes, however, prior approval for the view must be obtained from Legal Aid NSW and will be limited to views conducted outside the Sydney metropolitan area. Where the distance travelled exceeds a round trip of 70km, the travel allowance for a view may be approved or an appropriate fee negotiated.

How do I calculate the driving/road distance between destinations?

The website <http://www.travelmate.com.au> may assist in calculating distance between destinations.

Am I allowed to engage an agent?

In ordinary circumstances, a practitioner is not entitled to claim an additional grant of aid to instruct an agent. Where an agent is retained because the assigned practitioner is unavailable, the agent must be a panel practitioner and must be paid out of the assigned practitioner's lump sum fee for any court attendance up to the hearing stage.

Mentions: An additional allowance to instruct an agent at a mention will not be approved unless the practitioner can show that the matter is complex enough to justify an instructing allowance and:

- Legal Aid NSW is satisfied that engaging an agent is an economical use of legal aid funds; or
- exceptional circumstances exist.

Hearings: The use of an agent at a hearing will only be approved in exceptional circumstances. If a practitioner cannot attend a hearing it will generally be considered more appropriate for the matter to be reassigned to an available panel practitioner.